



STATE OF NEW JERSEY

In the Matter of James White,
Correctional Police Officer (S9988A),
Department of Corrections

**FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION**

CSC Docket No. 2020-842

List Removal Appeal

ISSUED: MARCH 16, 2020 (JET)

James White appeals the removal of his name from the Correctional Police Officer (S9988A), Department of Corrections eligible list on the basis of an unsatisfactory criminal record.

The appellant took the open competitive examination for Correctional Police Officer (S9988A), which had a closing date of January 31, 2019, achieved a passing score, and was ranked on the subsequent eligible list. The appellant's name was certified on July 4, 2019. In disposing of the certification, the appointing authority requested the removal of the appellant's name from the eligible list. Specifically, the appointing authority asserted that on April 30, 2013, the appellant was arrested and charged with Possession of a Controlled Dangerous Substance (CDS), less than 50 grams of Marijuana and Hashish in violation *N.J.S.A. 2C:35-10A(4)*; Use/Possession with Intent to Use Drug Paraphernalia in violation of *N.J.S.A. 2C:36-2*; Distribute/Possess with Intent to Distribute Drug Paraphernalia in violation of *N.J.S.A. 2C:36-3*; Possession/Distribution within 500 feet of Certain Structures in violation of *N.J.S.A. 2C:35-7.1A*; and Manufacture/Distribute/Possess with Intent to Distribute a CDS, less than one ounce of Marijuana in violation of *N.J.S.A. 2C:35-5B(12)* (4th degree), for which he participated in a pre-trial intervention (PTI) program.

On appeal to the Civil Service Commission (Commission), the appellant asserts that he disclosed the 2013 charges to the appointing authority, and he provided documentation to show that the charges were dismissed. Moreover, the

appellant maintains that, since the charges were dismissed, he should be restored to the list.

In response, the appointing authority maintains that the appellant should not be restored to the list. Specifically, the appointing authority asserts that, although the appellant argues that the 2013 charges were dismissed, he was involved in the charges and completed the PTI program less than seven years prior to when the list was issued. The appointing authority explains that law enforcement candidates must be able to follow the rules in order to ensure a safe and secure environment, and the appellant's background is inconsistent with those standards. Moreover, the appointing authority asserts that its goals are to select candidates who exhibit respect for the law in order to effectively manage the day-to-day operations of a prison system.

CONCLUSION

N.J.S.A. 11A:4-11, in conjunction with *N.J.A.C.* 4A:4-4.7(a)4, provides that an eligible's name may be removed from an employment list when an eligible has a criminal record which includes a conviction for a crime which adversely relates to the employment sought. In addition, when the eligible is a candidate for a public safety title, an arrest unsupported by a conviction may disqualify the candidate from obtaining the employment sought. See *Tharpe, v. City of Newark Police Department*, 261 *N.J. Super.* 401 (App. Div. 1992). In this regard, the Commission must look to the criteria established in *N.J.S.A.* 11A:4-11 and *N.J.A.C.* 4A:4-4.7(a)4 to determine whether the appellant's criminal history adversely relate to the position of Correctional Police Officer. The following factors may be considered in such determination:

- a. Nature and seriousness of the crime;
- b. Circumstances under which the crime occurred;
- c. Date of the crime and age of the eligible when the crime was committed;
- d. Whether the crime was an isolated event; and
- e. Evidence of rehabilitation.

The presentation to an appointing authority of a pardon or expungement shall prohibit an appointing authority from rejecting an eligible based on such criminal conviction, except for law enforcement, firefighter or correction officer and other titles as determined by the Commission. It is noted that the Appellate Division of the Superior Court remanded the matter of a candidate's removal from a Police Officer employment list to consider whether the candidate's arrest adversely related to the employment sought based on the criteria enumerated in *N.J.S.A.* 11A:4-11. See *Tharpe v. City of Newark Police Department, supra*.

Additionally, participation in the PTI Program is neither a conviction nor an acquittal. However, it has not been construed to be a favorable disposition. *See In the Matter of Clifton Gauthier, Rockaway Township*, ___ N.J. Super. ___ (App. Div. 2019); *Grill and Walsh v. City of Newark Police Department*, Docket No. A-6224-98T3 (App. Div. January 30, 2001); *See also N.J.S.A. 2C:43-13(d)*. N.J.S.A. 2C:43-13(d) provides that upon completion of supervisory treatment, and with the consent of the prosecutor, the complaint, indictment or accusation against the participant may be dismissed with prejudice. *In Grill, supra*, the Appellate Division indicated that the PTI Program provides a channel to resolve a criminal charge without the risk of conviction; however, it has not been construed to constitute a favorable termination. Furthermore, while an arrest is not an admission of guilt, it may warrant removal of an eligible's name where the arrest adversely relates to the employment sought. Thus, the appellant's arrest and entry into the PTI program could still be properly considered in removing his name from the subject eligible list.

Additionally, N.J.A.C. 4A:4-4.7(a)1, in conjunction with N.J.A.C. 4A:4-6.1(a)9, allows the Commission to remove an eligible's name from an eligible list for other sufficient reasons. Removal for other sufficient reasons includes, but is not limited to, a consideration that based on a candidate's background and recognizing the nature of the position at issue, a person should not be eligible for an appointment.

In this matter, it is clear that the appellant's 2013 arrest and charges adversely relate to the employment sought. The record reflects that he was charged with multiple drug-related infractions. Although the appellant states that he completed a PTI program and the charges were dismissed, he has not provided any information to explain his involvement in the incidents. Additionally, it cannot be ignored that, on appeal, the appellant presents no evidence of rehabilitation. The Commission is ever mindful of the high standards that are placed upon law enforcement candidates and personnel. The public expects Correctional Police Officers to present a personal background that exhibits respect for the law and rules. In this regard, it is recognized that a Correctional Police Officer is a law enforcement employee who must help keep order in the State prisons and promote adherence to the law. Correctional Police Officers like municipal Police Officers, hold highly visible and sensitive positions within the community and the standard for an applicant includes good character and an image of utmost confidence and trust. *See Moorestown v. Armstrong*, 89 N.J. Super. 560 (App. Div. 1965), *cert. denied*, 47 N.J. 80 (1966). *See also In re Phillips*, 117 N.J. 567 (1990). Accordingly, the appointing authority has presented sufficient cause to remove the appellant's name from the eligible list for Correctional Police Officer (S9988A). However, the removal in this matter does not prevent the appellant from applying for any similar positions in the future, and, given the nature and age of his criminal history, with the presentation of evidence of rehabilitation and the further passage of time, such a background will be insufficient to remove him from a future similar list.

ORDER

Therefore, it is ordered that this appeal be denied.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 12th DAY OF MARCH, 2020



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